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In re Application of	:	
Aust et al.	:	
Application No. 10/553,136	:	
PCT No.: PCT/EP04/03858	:	
Int. Filing Date: 13 April 2004	:	DECISION
Priority Date: 15 April 2003	:	
Atty. Docket No.: 016273-00600	:	
For: Method For Monitoring At Least	:	
Two People Carrying An External	:	
Respiratory Air Supply	:	

This is in response to the declaration of the inventors filed on 15 June 2007, which is being treated under 37 CFR 1.42.

### **BACKGROUND**

This international application was filed on 13 April 2004, claimed an earliest priority date of 15 April 2003, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 28 October 2004. The 30 month time period for paying the basic national fee in the United States expired at midnight on 15 October 2005. This international application became abandoned with respect to the national stage in the United States for failure to timely pay the basic national fee.

On 30 June 2006, applicants filed a petition under 37 CFR 1.137(b), which was granted in a Decision mailed on 05 September 2006.

On 11 December 2006, a Notice of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant, requiring the submission of an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and \$880.00 in additional claims fees.

### **DISCUSSION**

Review of the "Authorization" filed along with the declaration on 15 June 2007 reveals that it indicates that Peter Aust is deceased. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the

legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Examination of the declaration filed on 15 June 2007 reveals that it nominates "Michael" Aust, and that it has been signed by Michael Aust (as opposed to "Michel" Aust named in the published international application). Applicant has not provided an explanation of this discrepancy in the spelling of M. Aust's name (nor indicated whether Michael Aust and Michel Aust are the same person).

The declaration also nominates and provides citizenship information for Peter Aust, but does not provide the "citizenship, residence and mailing address of the legal representative" as required by 37 CFR 1.497(b)(2).

It appears that Michael Aust may be attempting to execute the application on behalf of the deceased inventor, but his relationship to the inventor (e.g., legal representative or heir) is unclear. The attached "Authorization" lists "members of the community of heirs," but it is not clear whether this list of "members" includes all of Peter Aust's heirs. The enumerated "members of the community of heirs" purport to grant Michael Aust "authority... to exploit these inventions and methods on which the patent applications are based." This document does not specifically identify which "patent applications" are encompassed. Moreover, it is not clear whether this document confers or seeks to confer upon Michael Aust the status of "legal representative," or whether the listed heirs are merely attempting to appoint him as a representative of their group.

Applicants should provide a declaration document identifying the entire inventive entity, providing the information required by 37 CFR 1.497(b)(2), and executed on Peter Aust's behalf by his legal representative or, if none has been appointed or is required to be appointed by the applicable law, by all of his heirs.

### **CONCLUSION**

The declaration is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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